SINGLE BENCH

(3)

C.S.101

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION No.2722/2006

PETITIONER : Khorbahra Chandrakar S/o Gend Lal Chandrakar, aged about 58 years, R/o Vill. Khamharia, Thana & Distt. Mahasamund (C.G.)

VERSUS

RESPONDENTS

1. Smt. Dashoda Nishad Wd/o Tijuram Nishad, aged about 23 years,

2. Smt. Parniya, W/o Bisahuram Nishad, aged about -43 yrs.

3. Bisahuram S/o Late Bahur Singh Nishad, aged about 45 yrs.

All are R/o Vill. & P.O. Khamharia Thana & Distt. Mahasamund (C.G.)

P.F. No. 2726/06
Presented by Shri N. Mishra
dated 26/6/06

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

DETAILS OF THE PETITION

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 2722/2006 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

25.08.2006

Shri Neelkanth Malaviya, counsel for the petitioner.

Arguments on admission heard.

Order dictated as follows:

Oral Order

This is a petition filed under Article 227 of the Constitution of India, challenging the legality and validity of order dated 30.3.2006 (Annexure-P/1) and framing of issues by order dated 3.4.2006 (Annexure-P/2), passed in Civil Suit No. 1 B/2005 pending in the Court of First Additional District Judge, Mahasamund (CG).

It appears that by the first order dated 30.3.2006, some objection raised by the defendant regarding exemption from payment of court fees has been decided by the trial Court. The brief facts are that one Tiju Ram died on account of electrocute on 11.9.2004 and a claim for sum of Rs.8,50,000/- was filed by the wife, father and mother of the deceased. This claim was filed against the sole defendant, petitioner herein, making allegations that since the service connection wire in between electricity pole and the electric pump installed by the defendant was not in order, the deceased received electric shock when he came in contact with the said wire. According to the plaint allegations, the plaintiffs have shown to be falling under special

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

category and they have claimed exemption from payment of court fee by notification of the State Government issued under Section 35 of the Court Fees Act. The trial Court decided the objection vide impugned order holding that on the basis of report submitted by the District Collector, they belong to the weaker section of the society and they were entitled to get benefit of notification issued under Section 35 of the Court Fees Act. A certificate to the said effect was also filed.

Section 35 of the Court Fees Act gives power to reduce or remit fees, it has been provided that the appropriate Government may, from time to time by notification in the Official Gazette, reduce or remit, in the whole or in any part of the territories under its administration all or any of the fees mentioned in the first and second schedules to the said Act annexed, and may in like manner cancel or vary such order.

In exercise of the powers conferred by section 35 of the Court Fees Act, 1870, the State Government by Notification F. No. 9-1-83-B-XXI, dated the 1st April, 1983, remitted in the whole of the State of Madhya Pradesh, as it then was, the court fees mentioned in Articles 1-A and 2 of the first schedule and Articles 5, 17 and 21 of the second schedule to the said Act payable on plaint by the following categories of persons whose annual

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand, namely:-

(i) member of Scheduled Tribes;
(ii) member of Scheduled Castes;
(iii) minors;
(iv) women;
(v) artisen;
(vi) unskilled labourer;
(vii) landless labourer;
(viii) person belonging to the weaker sections of society.

The trial Court holding that these persons are the persons below the poverty line and they also belong to the weaker section of the society, granted them exemption under the aforesaid notification issued under Section 35 of the Court Fees Act.

A perusal of the impugned order would show that there was sufficient material with the trial Court for taking such view. There appears to be no illegality in the order dated 30.3.2006, the petition, challenging the validity of the said order is dismissed.

So far as order relating to framing of issues are concerned, it appears that there is a pleading in Para-12 of the written statement that the electricity department is also a necessary party and in their absence, the suit is liable to be dismissed but the issues in this regard have not been framed.

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आदेश पत्रक

मामला क्रमांक W.P.No. 2722/2006 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Directions for framing of issues are not going to cause prejudice to the interest of other parties, it is simply a procedural matter which may be corrected in the interest of justice and for this reason to hear the other side is not always necessary because the order so passed is not going to adversely effect the other side. I hereby direct that in addition to the issuesframed by the trial Court on 3.4.2006 an additional issue pertaining to the pleadings raised in Para-12 of the written statement shall also be framed.

With the aforesaid direction, this petition stands finally disposed of.

Sd/-
Sunil Kumar Sinha
Judge

vatti

19.8.06

(पीछे देखिये)